etc.", thus making the right of action under the statute dependent on the rights of the injured party had he or she survived. But it has been held generally that statutes conferring on married women the right to sue and be sued as though sole do not remove the common law disability of either consort to sue the other for a personal tort.[1] Hence the logical decision of the Virginia Court that, in no case, could the personal representative of one consort recover against the other for death by wrongful act.[2]

This defect is not common to all statutes of Death by Wrongful Act. For example, under the Kentucky statute, a recovery was allowed against the defendant, who had killed his wife, in favor of the decedent's children.[3] This recovery was predicated on the fact that, under the statute, where there are children surviving the decedent, they get one half of the recovery. Under the same statute, the surviving spouse gets the whole recovery if there are no children, thus defeating the action, as the defendant is then the sole beneficiary. This was the decision in an earlier Kentucky case.[4]

DISPOSITION OF PERSONAL ESTATE OF MARRIED PERSONS—AMENDMENT TO THE CODE.—§ 5276 of the Virginia Code of 1919 provides:

> "When any provision for a *wife* is made in her husband's will *she may,* within one year from the time of admission of the will to probate, renounce such provision. * * * If such renunciation be made, or if no provision for her be made in the will, she shall have such share of the husband's personal estate as she would have had if he had died intestate."

By § 5273 of the Code the surviving husband or wife is made sole distributee of a deceased consort dying intestate and without issue. It would seem then that the practical effect of § 5276 was to render it impossible for a husband to bequeath personalty by testamentary document in such manner that his wife could not secure it, in cases where there was no surviving issue, since she might renounce the will and have such share of the husband's personal estate as she would have taken had he died intestate.

On the other hand, § 5134 of the Code gives to married women the right to "acquire, hold, use, control, and dispose of property as if unmarried". This, of course, includes the power to dispose of personal estate by will. In the event of a married woman's

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[1] Thompson *v.* Thompson, 218 U. S. 611, 30 L. R. A. (N. S.) 1153, 21 Ann. Cas. 921; Strom *v.* Strom, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, 116 Am. St. Rep. 387.

[2] Keister's Admr. *v.* Keister's Ex'rs, 123 Va. 157, 96 S. E. 315, 1 A. L. R. 439.

[3] Robinson's Admr's *v.* Robinson (Ky.), 220 S. W. 1074.

[4] Dishon's Adm'r *v.* Dishon's Adm'r, 187 Ky. 492, 219 S. W. 794.

death without issue, it would seem then that the surviving husband could not renounce the will and take all of the personal estate as if she had died intestate.

Fortunately the matter was brought to the attention of the Legislature, and as a result, § 5276 appears in the 1920 Acts of Assembly in amended form as follows:

> "When any provision for a husband or wife is made in the consort's will, the survivor may, within one year from the time of the admission of the will to probate, renounce such provision. * * * If such renunciation be made, or if no provision for the surviving husband or wife be made in the will of the decedent, the surviving consort shall, if the decedent left surviving issue, etc., * * *; or if no such issue survive, the surviving consort shall have one half of the aforesaid surplus; otherwise the surviving consort shall have no more of the said surplus than is given him or her by the will."

EVIDENCE—WRITTEN INSTRUMENTS—ADMISSIBILITY OF CONTEMPORANEOUS PAROL AGREEMENT.—It is an elementary rule of law that a contemporaneous parol agreement inconsistent with the terms of a written contract cannot be introduced to vary or contradict the terms of the contract, except in case of fraud or mistake. The rule is rigorously applied in Virginia to the case of an oral agreement contemporaneous with the execution of a promissory note providing for payment by other means than money.[1] In the case cited, the maker of the note wished to prove the full performance of a contemporaneous oral agreement providing that the payee's enjoyment of the rents and profits accruing from his (the maker's) estate during the same period should satisfy the note. The evidence was held inadmissible, the court saying:

> "One of the essential attributes of a negotiable note is that it is payable in money. * * * The notes in this case are described as negotiable in the bill, and upon their face are plainly payable in money.
>
> "The alleged oral agreement embodied an undertaking on the part of the maker of the notes * * * which is in direct conflict with the manner of payment provided for therein. By the notes they agreed to pay in money; by the parol contract they were not to pay in money but in labor."

No earlier Virginia case is to be found directly in point, but

[1] Rector *v.* Hancock (Va.), 102 S. E. 663.